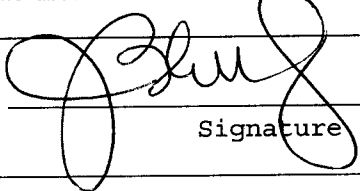


SOLICITATION, OFFER AND AWARD DATA PROCESSING / TELECOMMUNICATIONS				FIN:	
1. Contract No:	2. IFB No:	3. Date Issued:	Date Due:	4. APR	5. Approval No:
	2001-022	Oct 9, 2001	Oct 30, 2001	45	
For Information Call: John Tackley (804) 371-5930					
6. ISSUING OFFICE:			7. SHIP TO:		
Department of Information Technology Acquisition Services Division 110 S. 7th Street, Lobby Floor Richmond, Va. 23219-9300 ATTN: Bid Section			Locations as indicated on Individual Orders		
SOLICITATION					
8. Sealed bid(s) for furnishing the Products and Services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Oct 30, 2001. CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions					
This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 10; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-18; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference. Offers will be publicly opened at: 2:10 p.m. local time Oct 30, 2001, in the ASD Conference Room, 110 South 7th Street, Lobby Floor. All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.					
Paul H. Dodson, Director Acquisition Services			 Signature		
OFFER					
In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule.					
9. CONTRACTOR:			10. BILL TO:		
Company Name: _____ Address: _____ City, State: _____ Signature: _____ Name (Typed): _____ Title: _____ Phone: _____			Locations as Indicated on Individual Orders		
AWARD					
11. Accepted as to Item Numbers:			12. Amount:		13. Award Date:
14. Name of Contracting Officer:		15. COMMONWEALTH OF VIRGINIA			PAGES:
Jeff Davis Contracts Manager		By:			1 of 10

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COMPUTER BASED TRAINING MATERIALS

SECTION 1: IFB PROCEDURES**1.1 Purpose**

The purpose of this Invitation for Bids (IFB) is to establish a statewide contract for the purchase of computer based training (CBT) courses, materials and related services by Authorized Users¹.

For purposes of this solicitation, CBT offerings are divided into two (2) course categories,

- Information Technology (IT) Professional Development,
- Desktop Applications/End User Computing.

The Department of Information Technology (DIT) intends to make multiple contract awards in each category, up to 5 awards per category. The first award in a category shall be to the responsive and responsible bidder with the lowest evaluated cost, and thereafter bids will be ordered in ascending order, by evaluated cost, by responsive and responsible bidder. After the first bid is selected for award, additional contracts may be awarded if the courses offered by the bid under review are determined to add course offering topic areas, content or value to those bid offerings already selected for award. The Commonwealth, at its sole discretion, will make this determination. Additionally, services in support of or related to the courses offered by the bidder may also be awarded. A bidder may submit a bid offer in one or both categories.

Contract usage or purchase volume is uncertain. An award does not guarantee any purchase by a Commonwealth of Virginia Authorized User. The resulting contract(s) shall be Indefinite Delivery, Indefinite Quantity type contracts (IDIQ).

1.2 Scope

This document contains the instructions governing the bid offer being submitted and the material and format in which bid offers are to be structured. Also included are mandatory contractual terms and conditions.

1.2.1 GOVERNING DOCUMENTS

The governing documents for this solicitation shall be only the most recently dated Adobe PDF and other file(s) as issued and published on the ASD website at: <http://asd.state.va.us> . These files include the IFB 2001-22 solicitation document and MS Excel spreadsheet file for use in submitting the pricing and other data, as well as any and all appendices, attachments, answers to vendor questions, amendments and other pertinent documents if and as appropriate.

¹ Any state agency, institution of higher education, locality or local school division, political subdivision or other public body as defined in the Code of Virginia, §11.37.

COMPUTER BASED TRAINING MATERIALS**1.3 Pre-Bid Conference**

None.

1.4 Vendor Understanding of Requirements

It is the Bidder's responsibility to inquire about and clarify any requirement of this IFB that is not clearly understood by the Bidder. All verbal questions are discouraged, as verbal answers provided are non-binding to this solicitation. The Commonwealth will not be bound by any verbal responses to questions. All inquiries concerning this IFB should be submitted in writing to:

Mr. John Tackley
Department of Information Technology
110 South 7th Street - Lobby Floor
Richmond, Virginia 23219

All written inquiries must be received by the Issuing Office on or before the close of business, October 22, 2001. No further written inquiries will be accepted after that date. In the event the due date of this solicitation is changed, for whatever reason, further written inquiries must be received within sufficient time prior to the revised due date so that written amendment(s) can be sent and received by bidders. E-mail is preferred. Please direct e-mail, with "IFB 2001-22" in the Subject line, to the attention of John Tackley at this e-mail address:

jtackley@dit.state.va.us

(Facsimiles are also acceptable. The ASD fax number is (804) 371-5969.)

1.5 Identification of Bids

The cover page of the solicitation must be returned, bearing the authorized signature of a responsible representative of the bidder, and other requested information on that page, including the offering firm's Federal Identification Number (FIN). One paper copy of the complete bid offer, including pricing must be submitted for contractual purposes. Bid offer must also be submitted on CD-ROM discs, and shall be clearly marked on the outside cover of all envelopes, boxes, CD-covers or packages, and also on the individual CD-ROM discs themselves, as follows:

From: Name of Bidder
 Street or P.O. Box Number
 City, State, Zip Code
 IFB Number 2001-22
 (Bid offer, Redacted Bid Offer or Pricing Spreadsheet)

The CD-ROM discs must be individually labeled with their contents. The labeling information should be printed on the CD-ROM media.

1.6 Oral Presentation/Demonstration

An oral presentation and or demonstration by the Bidder may be required. If an oral presentation/demonstration is required to clarify or substantiate any area contained in the bidder's response, the Issuing Office will schedule a time and place for the presentation. The bid offer must

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be complete in all respects, as oral presentations and demonstrations MAY NOT be scheduled. All costs incurred by a Bidder to provide oral presentations/demonstrations are the responsibility of the Bidder.

1.7 Proprietary Information

Trade secrets or proprietary information submitted by a Bidder or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Bidder, or Contractor must invoke the protections of Code of Virginia, Section II 52D, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. (Bidders must use the Tools/Track Changes /Highlight Changes feature of MS Word for all Word document files submitted.) THE CLASSIFICATION OF AN ENTIRE BID, TECHNICAL PROPOSAL DOCUMENT, LINE ITEM PRICES AND/OR TOTAL BID PRICES AS PROPRIETARY IS NOT ACCEPTABLE AND MAY RESULT IN REJECTION OF THE BID. IF THE BID IS ACCEPTED, FAILURE TO MARK THE DATA OR OTHER MATERIALS AS STATED WILL RESULT IN THE DATA OR OTHER MATERIALS BEING RELEASED TO VENDORS OR THE PUBLIC AS PROVIDED IN THE VIRGINIA FREEDOM OF INFORMATION ACT.

1.8 Bid Format

When preparing a bid offer, bidders must adhere to the following general instructions in order to bring clarity and order to their solicitation response and the subsequent evaluation process. The bid offer is to be delivered in several parts or elements, all within a single main response envelope labeled with the Bidder Firm name and the Solicitation number. All parts are to be submitted, both paper/hard copy and separate CD-ROM discs, each clearly and appropriately labeled. The required bid elements are as follows:

- 1.8.1 The first element is the cover sheet of this solicitation document. It must be signed by the Bidder's contractually binding authority, and must be submitted to the issuing Office identified on the face page of the solicitation. The firm's address, contact person and other information, including the firm's FIN must also be entered in the spaces provided on this page.
- 1.8.2 One complete paper/ printed hard copy of each separate bid offer, including the complete solicitation document, and printed hard copies of all files submitted on CD-ROM, including the individual MS Excel spreadsheet workbooks (*Instructions, Professional Development, Desktop Apps-End User Computing, Listing Spreadsheet*) must be submitted in a sealed envelope labeled "IFB 2001-22 Bid Response – Paper Copy." The paper/ printed hard copy documents will be used for contractual purposes when making a bid award.
- 1.8.3 All CBT courses and related services offered must be listed in a **Listing Spreadsheet**. This Listing must include the information shown in the table below. A complete CBT product and optional service(s) listing shall consist of all:
 - CBT courses/products offered.
 - Related services offered.
 - Bid prices offered (derived from the Discount and Index Price, both from the **Pricing Spreadsheet**)
 - Published price list, contract listing or URL of Publisher's web page(s) where pricing can be verified and information and descriptions of CBT courses offered can be viewed.

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All document(s) file(s) must also be submitted in an appropriately labeled sealed envelope, in MS Word format on an appropriately labeled CD-ROM disc, in a Table formatted as follows:

Company Name	Course Title	Delivery Medium	Course ID#	Bid Price (DC x IP)	% Discount	Index Price	Index document (Published price list, contract listing or URL)
Sample Co.	MS Word '97 – Level 1	1 user, CD-ROM	PI- 111222c	\$77	23%	\$100	www.sampleco.com/msword/111222.html

- 1.8.4 Pricing Spreadsheet,** (see Section 2.2). The Pricing Spreadsheet (downloaded from the ASD website) is to be submitted on a clearly marked CD-ROM disc. The Pricing Spreadsheet must be delivered in accordance with instructions contained in Section 2.2. Be advised, you are required to download a MS Excel spreadsheet file for your required use in submitting this cost information. You must follow the instructions given for downloading and supplying required information and costs by inserting data into the spreadsheet file supplied at the ASD website (see Section 1.10). This cost information must be submitted in MS Excel format, and only one CD-ROM disc is required.
- 1.8.5** A redacted bid offer, but only if necessary, for identification of proprietary information. The revised bid offer, with proprietary information redacted, is to be submitted on a separate CD-ROM disc. Please refer to the preceding paragraph # 1.7 for instructions. Data that has been removed must be so noted and there must be an explanation for each item removed as proprietary. NOTE: IT IS NOT ACCEPTABLE TO MARK AN ENTIRE DOCUMENT AS PROPRIETARY. IT IS ALSO UNACCEPTABLE TO MARK THE BID PRICING AS PROPRIETARY. Bidders are referred to the Commonwealth of Virginia Vendors' Manual, section 1.9 for clarification.
- 1.8.6** If not the Publisher or OEM of CBT products offered, the Bidder must supply a hard copy, written confirmation, signed by a responsible person from the Publisher or OEM, that states that the bidder is a regular dealer of all Publisher or OEM products and services offered.

1.9 Bid Pricing Format

Please refer to Section 2.2.1 entitled "**Pricing Schedule**" for detailed instructions.

1.10 ASD Website

The Commonwealth maintains an acquisition website at <http://asd.state.va.us>. Bidders are requested to check this site prior to submitting bids, in the event the solicitation is amended or extended. Failure to check for amendments does not relieve the Bidder from complying with all terms of any such amendment.

COMPUTER BASED TRAINING MATERIALS

SECTION 2: MANDATORY REQUIREMENTS**2.1 CBT Categories and Requirements**

The Commonwealth is seeking to establish multiple Statewide Master Contracts in two CBT categories. The categories are:

- 2.8.1 Information Technology (IT) Professional Development,**
- 2.8.2 Desktop Applications/End User Computing.**

2.1.1 General Requirements: The following mandatory requirements apply:

- The minimum number of course offerings in each category to be considered for award shall be:
 - 350 IT Professional Development courses
 - 200 Desktop Apps/End User Computing courses
- The following delivery mediums must be provided, but are not limited to:
 - DESKTOP based:
(DISKETTE/CD-ROM/DVD-ROM (or other recorded, mail-able medium)
 - WEB based: (Internet/Intranet, online or downloadable)
 - LAN based: (Customer Server, online or downloadable)
- The following course features must be provided, but are not limited to:
 - Skill Assessments
 - HELP feature
 - Book-marking
 - 30 Day No-Cost Preview
 - Administrative features:
 - Registration
 - Tracking
 - Reporting
- Industrial Funding Adjustment (IFA), as specified in the attached Contractual Terms and Conditions herein.

2.2 Bid Pricing (Pricing Schedule)**2.2.1 PRICING SCHEDULE:**

BIDDERS MUST SUBMIT BID PURCHASE PRICING WITHIN THE PROVIDED MS EXCEL FILE, WHICH BEARS THE NAME OF:

"IFB200122.XLS"

THIS FILE MUST BE DOWNLOADED FROM THE ASD WEBSITE LOCATED AT URL:

<http://asd.state.va.us/bids/200122.htm>

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(NOTE/ Download Instructions:

From the above URL, right click on "Spreadsheet", then select "Save Target As ...", provide the file extension "xls" to the file name, and then save it to your desktop or other location. After the file download completes you may use MS Excel to open the file.)

THIS FILE MUST BE USED UNMODIFIED (EXCEPT For Bidder Information and Pricing) FOR SUBMISSION OF ALL BID PRICING ON THE CD-ROM DISC SUBMITTED IN RESPONSE TO THIS SOLICITATION. PRICING not organized in this manner may cause bid to be ruled non-responsive for failing to specifically address these requirements.

The instructions for completing the two category worksheets are re-printed here.

MARKET BASKET OF COURSE OFFERINGS and LISTING Spreadsheet:

Award will be based upon the Evaluated Cost (EC) which is the sum total of costs for the "Market Basket" of courses provided. Multiple awards up to 5 may be made. Award will consist of the *entire* catalog of courses available from each selected bidder.

INSTRUCTIONS: On the following two worksheets, (Professional Development and Desktop Apps...) enter your firm's data per the following instructions:

NOTE: *Sample data, shown in red font color, has been inserted as a guide on each sheet.*

Enter your firm's name in the "COMPANY NAME" column.

Enter your firm's course data that most closely matches the provided titles.

Enter the course Delivery Medium, License and ID number or part number, as appropriate.

Enter your firm's bid price in the "BID PRICE" column. **(NOTE: All prices must include IFA.)**

Enter the Publisher's purchase price in the "Index Price" column. (Discount is calculated from the Bid Price and the Index Price)

Enter the Publisher's Index Document or website URL in the "INDEX Price Document/URL" column (where the published price for the course can always be found).

2.2.2 EVALUATION OF COSTS:

Evaluated Cost (EC) for each CBT course/product offered will be determined by the numeric sum of bid costs for the Market Basket Sampling of courses listed in the Pricing Spreadsheet, for each category, separately. Ranking of bidders within categories will be ordered in ascending **EC** for the purpose of making multiple awards, up to a total of 5 awards within the two CBT categories.

2.2.3 CONTRACT PRICING:

Contract Line Item Number (CLIN) Pricing for all CBT courses/products/services offered shall be determined by the application of a Contract Discount, from a publicly available published Index Price document or URL (Internet website). Contractor(s) must, at all times during the term of this contract, make available to the Commonwealth (preferably in electronic form), the current Index Price of each contract item. The Index Price may come from such publicly available published documents as a price list (such as "Retail" catalog pricing) or from a contract, which is still in effect at the time of contract award (such as a "GSA" or other contract) or from a website URL where such documents or pricing are publicly available. Distributor or Reseller catalog pricing is not acceptable for this purpose.

Contractor(s) shall update the Index Price document on a regular basis and provide the updated Index Price document to the Contracts Manager, DIT. The schedule for providing such updates may be at the contractor's convenience dependent upon contractor's frequency of publication of pricing changes (i.e. daily, weekly, monthly, etc.), but in all cases shall, at a minimum, be provided to the Contract's Manager, DIT on a quarterly basis. The current Index Price for each CLIN will be published on the ASD website for the convenience of authorized contract users. At no time shall a lower price than the Index Price less Contract Discount be offered to government customers within

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the Commonwealth of Virginia. Any promotional or otherwise "special" pricing must be available to all authorized contract users.

ALL CONTRACT PRICES MUST BE NOT-TO-EXCEED PRICES. At no time during this agreement will a Contractor be allowed to exceed the prices offered in the IFB response, except as provided herein. The Master Contract pricing shall therefore be Not-To-Exceed (NTE) pricing.

After contract award(s), DIT will use the NTE prices in the following manner. CBT courses/products/services Index Prices offered shall be verifiable by referring to the most current Index Price document. All subsequent CLIN price changes for product replacements, whether caused by manufacturer price changes, obsolescence, etc. will be governed by the application of the constant Contract Discount for the life of the Master Contract.

2.3 Product Substitutions and/or Additions

The Contractor may substitute or replace products that are of equal or greater value and equivalent or greater specification to existing contract items, as necessary, when the change is required due to the Publishers or OEM's course product/service changes. All changes must be reflected by the Index Price document or website URL designated for that item, prior to substitutions of CLINs. Products may also be added to the contract as the need arises, upon mutual consent of the Commonwealth and contractor, but only at the Contract Discount for like items or items within the same categories.

2.4 Index Price Document or URL Persistence and Contract Administration

It is the intent of the Commonwealth to be able to use all Index Price documents, their updates and/or website URL(s) supplied with the bid offer for the life of the contract. In the event that any of these cannot be persistently maintained, the contractor must notify the Contracts Manager, DIT of any and all changes to them a minimum of 30 days prior to any changes. For award purposes, the Index Price document or website URL provided on the printed hard copy will be used to verify and validate the Contract Discount for courses/products/services initially offered. Should any change to the Index Price document or website URL(s) provided with the bid offer be made prior to award, but after this solicitation's due date, bidder must notify DIT/ASD immediately. E-mail notification is preferred. Please direct e-mail, with **"IFB 2001-22, Index Price Document/URL Change Notification"** in the Subject line, to the attention of John Tackley at the following e-mail address:

jtackley@dit.state.va.us

and also follow up the e-mail message notification with an original hard copy mailed to:

Mr. John Tackley
Department of Information Technology
Acquisition Services Division
110 South 7th Street – East Lobby Floor
Richmond, Virginia 23219

2.5 Bid Evaluation Period

The Commonwealth may elect to conduct testing of products offered before the award of the Contract. All Bidders should be prepared to provide offered courses/products for such testing prior to award. Should the COV elect to test a Bidder's offering, the Bidder must provide one (1)

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evaluation unit for each course listed in the Market Basket sampling. The Delivery Medium specified in the Pricing Spreadsheet will determine how the product is provided for bid evaluation. If the COV determines that the Bidder's offering does not meet the specifications as stated in the IFB, the bid will be rejected. The Bidder shall be liable for all costs associated with the courses/products submitted for evaluation.

2.6 Warranty/Maintenance

Contractor shall provide a toll free technical support contact number with each delivery where authorized user may obtain assistance with the installation, configuration and use of the CBT product identified in individual purchase orders.

2.7 Delivery

Delivery shall be 30 days after receipt of order.

2.8 Use Restrictions

- 2.8.1** Title to all CBT products ordered under this contract shall remain solely that of the contractor.
- 2.8.2** Delivery medium specified on each order shall determine how CBT products are to be licensed and used by the ordering Agency/Authorized Contract User(s). Usage rights extend to contractors employed by the ordering agency.
- 2.8.3** The ordering Agency is authorized to copy installed CBT products for backup and archival purposes only.
- 2.8.4** The ordering Agency shall be responsible for any and all problems arising from hardware or software compatibility problems arising from installation of the CBT product ordered. The contractor will assist in correcting any and all such problems to the maximum feasible degree.

2.9 Industrial Funding Adjustment (IFA)

All Pricing shall include an Industrial Funding Adjustment as specified in the attached Contractual Terms and Conditions herein.

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SECTION 3: SOLICITATION INSTRUCTIONS**SOLICITATION INSTRUCTIONS**
REV. 12/15/00**1. EXPLANATION TO VENDORS**

Any explanation desired by a vendor regarding this solicitation/invitation for bid must be requested in writing and with sufficient time allowed for a reply to reach the vendor before the submission of their bids. PRIOR TO SUBMISSION OF A BID, VENDORS ARE REQUIRED TO READ THESE INSTRUCTIONS, REVIEW THE SCHEDULE, READ ALL TERMS AND CONDITIONS AND CHECK THE ACQUISITION SERVICE DIVISION'S (ASD'S) WEB PAGE AT ([HTTP://ASD.STATE.VA.US](http://ASD.STATE.VA.US)) FOR ANY AMENDMENTS OR CHANGES. THIS SOLICITATION IS SUBJECT TO THE PROVISIONS OF THE COMMONWEALTH OF VIRGINIA VENDOR'S MANUAL, WHICH WAS REVISED IN DECEMBER 1998 AND ANY REVISIONS THERETO, WHICH ARE HEREBY INCORPORATED INTO THIS CONTRACT IN THEIR ENTIRETY. A copy of the manual is available for review at the purchasing office, and can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page (www.dgs.state.va.us/dps). Any interpretation required by the State will be in the form of an amendment to the solicitation; SEE PARAGRAPH 11 BELOW. Oral explanations or instructions given before the award of the contract will not be binding. In any conflict arising between this solicitation and the Vendors' Manual, this solicitation shall prevail.

2. PREPARATION OF SOLICITATION

- A. Bids shall be submitted on the forms furnished, and must bear an original signature by an individual authorized to bind the company submitting the bid. If erasures or other changes appear on the form, each erasure or change must be initialed by the person signing the bid. Telegraphic or facsimile bids will not be considered. Vendors may not submit multiple bids in a single envelope.
- B. Vendors are required to enter their Federal Identification Number [FIN] in the upper right hand corner on Page 1, DIT Form 62. This number must correspond with the FIN number shown on Page 1 of the DIT Vendor Application For Registration Form submitted by a principal or officer of the firm submitting the bid. Failure to enter a number in the space provided or to provide a correct FIN number may delay award or result in DIT determining that the vendor is not registered to conduct business with DIT. It is the vendor's responsibility to provide the correct FIN number and to keep DIT updated as to any changes in vendor's status.
- C. The bid form may provide for submission of a price or prices for one or more items. All prices shall be entered in the schedule; "IFB-2001-04-PRICING-SCHEDULE-SS.XLS". Where the bid form explicitly requires that the vendor bid on all items (e.g., an all or none requirement), failure to do so will disqualify the bid. When submission of a price on all items is not required, vendor should insert the words "no bid" in the space provided for any item on which no price is submitted.
- D. Additional bids may be submitted, when in the vendor's judgment they can provide more than one solution, which meets the required specifications of the procurement. Additional bids shall

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be submitted on either a duplicate copy of the bid document or on plain paper and shall be clearly identified with the words "ADDITIONAL BID" written or printed on the face of each additional bid. Additional bids shall not be considered unless detailed specifications or descriptions sufficient to establish quality, utility and merit accompany the bid.

VENDORS SUBMITTING ADDITIONAL BIDS ARE REMINDED THAT THE TERMS AND CONDITIONS WHICH APPLY TO THE ORIGINAL BID SHALL ALSO APPLY TO THE ADDITIONAL BID AND ANY MODIFICATION TO TERMS AND CONDITIONS OF A SOLICITATION OR THE ADDITION OF RESTRICTIVE PROVISIONS BY A BIDDER SHALL BE CAUSE FOR REJECTION OF THE BID.

- E. Modification of bids already submitted will be considered if received at the office designated in the invitation for bids before the time set for opening of bids.

3. SUBMISSION OF BIDS

TO BE CONSIDERED, THE BID MUST BE RECEIVED AT THE ADDRESS GIVEN IN BLOCK #6 OF THE SOLICITATION ON OR BEFORE THE DATE AND HOUR DESIGNATED. Vendors must pay particular attention to ensure that the bid is properly addressed. The State is not responsible if the bid is not properly addressed. The State is not responsible if the bid does not reach the destination specified by the date and time identified in block #8 page 1 of the Bid. Sealed bids received after the date and hour identified in block #8 are automatically disqualified, and will not be considered. All bids must be sealed, marked and addressed, to the address shown in block #6 of the Solicitation, and marked on the outside of the vendor's envelope as in the example below. Failure to do so may result in a premature opening of, or a failure to open, the bid.

From:	Name of Vendor	
	Street or Box Number	
	City, State, Zip Code	
	Due Date	Time
	IFB No.	

4. SPECIFICATIONS AND USE OF BRAND NAMES

Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bids to the specific brand, make or manufacturer named. Any item, which the State at its sole discretion determines to be the equal of that specified as defined in the Schedule, will be accepted. The award will be made to the lowest responsive and responsible bidder or bidder offering the functional equivalent to the brand name described in the specification. Thus, equivalent products of other manufacturers will be considered only if proof of equivalency is contained in or accompanies the bid.

5. LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWALS OF BIDS

- A. Any bids received at the office designated in block #6 of the Solicitation after the exact time specified for receipt will not be considered for award. (See Paragraph 4.10 of the Vendor's Manual for further discussion.)
- B. A bid may be amended and/or withdrawn by a vendor if the office issuing the bid receives the request in writing before the date and hour set forth in the bid form. The request must be signed by a person authorized to represent the person or firm that submits the bid. Submission of a subsequent bid

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shall normally constitute the withdrawal of any prior bid submitted by the same bidder or bidder on the same IFB.

6. PUBLIC OPENING OF BIDS

Bids will be publicly opened at the time and date specified on page 1 of the Solicitation document. The content of these solicitations will be made public in accordance with Paragraphs 1.9 and 2.4 of the Vendor's Manual. Bids will not normally be evaluated at the bid opening meeting. All bids will be opened at the location shown on page 1 of the solicitation.

7. SOLICITATION TERMS AND CONDITIONS

The terms and conditions contained in this solicitation are considered mandatory and are the only terms and conditions governing transactions under any contract awarded as a result of this solicitation.

If the vendor includes additional terms and conditions on pre-printed marketing sheets, pre-printed catalogues, or other pre-printed materials, then it is understood that those terms and conditions are of no consequence to any resulting contract.

Any other modification, addition, clarification, or change to the mandatory terms and conditions by the vendor shall cause the bid to be rejected.

8. AWARD OF CONTRACT

Bids shall be evaluated and the responsive and responsible bidder(s) offering the lowest price will be awarded a Contract. The State reserves the right to reject any and all bids in whole or in part and to waive any informality in the bids.

9. AWARD NOTICES

Upon the completion of evaluation, the State will either post a NOTICE OF AWARD (NOA) or a NOTICE OF INTENT TO AWARD (NOIA). If a NOIA is used, the notice will be publicly posted ten days prior to the actual award date of the contract. All award notices will be posted on ASD's Web Page ([HTTP://ASD.STATE.VA.US](http://ASD.STATE.VA.US)) and posted in ASD's lobby in written format.

A NOTICE OF INTENT TO AWARD OR A NOTICE OF AWARD will be mailed to any bidder submitting a self-addressed, stamped envelope with their bid.

NOTICES OF INTENT TO AWARD OR NOTICES OF AWARD will be posted in accordance with paragraph 6.3 of the Vendor's Manual.

TELEPHONIC REQUESTS FOR BID RESULTS WILL NOT BE HONORED.

10. FAILURE TO DELIVER

Failure to comply with the terms and conditions of the IFB or to deliver equipment, software or services identified in the solicitation at the price quoted may result in cancellation or rescission of the

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award/contract by the Commonwealth and may subject the Contractor to removal from DIT's Vendor Registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

11. AMENDMENT OF SOLICITATION

Any amendment or change to this solicitation will be issued in writing and will identify the changes to be made in the bid. All amendments will be posted to the ASD's Web page at (<http://asd.state.va.us>) and posted in ASD's lobby in written format.

If the bid opening date is extended the new date and time will be clearly shown on the face of the amendment.

Bidders will be required to sign and return a copy of the amendment with their bid to indicate that they have received the document and are aware of the changes made.

12. ANTI-COLLUSION CERTIFICATION

By Bidder's signature on the face of this bid, Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same equipment, software, or services, and is in all respects fair and without collusion or fraud. Vendor understands collusive bidding is a violation of the Virginia Governmental Frauds Act and Federal Law and can result in fines, prison sentences, and civil damage awards. Bidder agrees to abide by all conditions of this bid and certifies that he or she is authorized to sign this bid for the bidder's firm.

13. DEMONSTRATIONS

The State reserves the right to require the Bidder to demonstrate to the satisfaction of the State, that the products offered will perform in a completely acceptable manner and to meet or exceed the specifications referenced in the solicitation. The demonstration site and time is subject to agreement between the State and Bidder. A Bidder refusing to demonstrate his products bid after determination that he is the apparent low responsive and responsible bidder may be removed from DIT's vendor registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

14. PROTESTS OF AWARDS

All protests of awards shall be conducted in accordance with Chapter 9 of the Vendors Manual.

15. VENDOR REGISTRATION

AN AWARD WILL NOT BE MADE TO ANY BIDDER NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A completed registration form must be on file or received by DIT (Acquisition Services Division) not later than the award date. A registration form may be obtained online at <http://asd.state.va.us>, or by calling (804) 371-5900.

COMPUTER BASED TRAINING MATERIALS**16. CONTRACT**

Any contract awarded as a result of this solicitation, offer and award shall be between DIT and the Contractor. No other agency, institution or public body may negotiate in any way with the vendor concerning the items identified in the schedule or any terms and conditions of the contract. All problems associated with the resulting contract shall be brought to the attention of the Contracts Manager, DIT.

Specifications - Any comments or questions concerning the specifications, terms and conditions or any note contained in this solicitation shall be submitted, in writing to the issuing office (See Block #6 DIT Form #62) at least ten (10) days prior to the closing date.

17. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder must invoke the protections of Code of Virginia, Section 11-52D, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. **The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid document, line item prices and/or total bid prices as proprietary or trade secrets is not acceptable and will result in rejection of the bid.**

**Mandatory Terms and Conditions
For
IFB2001-022**

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth " or "State", will acquire computer based training (CBT) courses, materials and related Services from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor."

"Authorized Users" of this Master Contract as identified by the Commonwealth to place Orders, shall be any state agency, institution of higher education, locality or local school division, political subdivision or other public body as defined in the Code of Virginia, §11.37.

2. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet site (www.dgs.state.va.us/dps/).

3. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth and or the Authorized User. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

4. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates

public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 11-35.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. ETHICS IN PUBLIC CONTRACTING

By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their bids, bidders certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

7. DEBARMENT STATUS

By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on Contracts for the type of goods and/or Services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

8. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

9. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the Contract shall be effective unless reduced to writing and signed by the parties.

10. CLARIFICATION OF TERMS

If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

11. PAYMENT

a. To Prime Contractor:

1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

3) All goods or Services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 11-69).

b. To Subcontractors:

1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth and or the Authorized User for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract;
or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth and or the Authorized User.

12. PRECEDENCE OF TERMS

Paragraphs 1-12 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

13. QUALIFICATIONS OF BIDDERS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the Services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the goods contemplated therein.

14. TESTING AND INSPECTION

The Commonwealth and or the Authorized User reserves the right to conduct any test/inspection it may deem advisable to assure goods and Services conform to the specifications.

15. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

16. MODIFICATIONS

This Contract maybe modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the individual identified in block #14 of this solicitation or his duly designated alternate, and for the Contractor the person identified in block #9 of the solicitation.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

17. DEFAULT

In case of failure to deliver goods or Services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

18. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth User's excise tax exemption registration number is 54-73-0076K.

19. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly specify and identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product offered is an equal product, such bid will be considered to offer the brand name product referenced in the solicitation.

20. TRANSPORTATION AND PACKAGING

By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

21. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these

insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth and or the Authorized User of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
- d. Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the Contract.)

22. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of 10 days.

23. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

24. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, Services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, Services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, Services, or disbursements from an alternative provider.

25. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth and or the Authorized User) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth and or the Authorized User's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth and or the Authorized User in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth and or the Authorized User may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth and or the Authorized User to exercise any remedy available to it be construed as a waiver of or consent to any breach.

26. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this solicitation as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

27. DELIVERY DATE

- a. The Contractor shall deliver the requested CBT, or Services ready for use, within 30 days ARO.
- b. Any amendment by the State to this Contract or any part thereof, may require the establishment of a new mutually agreed to required delivery date. The State may delay the installation date by notifying the Contractor at least ten (10) days before the required installation date.
- c. If the CBT or Services is not delivered within the time specified herein, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver the proposed as stated in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.
- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

28. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth and or the Authorized User for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth and or the Authorized User's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth and or the Authorized User, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.1-122 and Section 2.1-127 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth and or the Authorized User may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth and or the Authorized User for liability arising solely out of the Commonwealth and or the Authorized User's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth and or the Authorized User, or at Contractor's option and expense, may obtain the right for the Commonwealth and or the Authorized User to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth and or the Authorized User is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth and or the Authorized User to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth and or the Authorized User has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth and or the Authorized User. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph 7.

29. NON-APPROPRIATION

All funds for payment of CBT or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or Services dependent on such federal funds without further obligation.

30. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

31. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions and all CBT specifically listed in the Schedule, and the notes in the Schedule constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to equipment and/or software acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for equipment acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

32. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth and or the Authorized User of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

33. TERM

The Term of this Contract shall be from the date of award and continue unabated for three (3) years. The Commonwealth and or the Authorized User at its sole discretion, may extend the Contract for three (3) one (1) year periods after the initial three year Term. The Commonwealth and or the Authorized User will issue written documentation to the Contactor at least 30 days prior to the end of any current Term, stating its desire to extend the Contract.

34. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

35. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

36. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or Services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

37. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, software and Services are subject to inspection and testing by the Commonwealth and or the Authorized User, as delineated herein under TESTING AND INSPECTION, and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given thirty (30) days from the completion of installation by the Contractor (or thirty (30) days after delivery if customer installed) to test, evaluate and accept the materials, software and Services delivered or furnished under this Contract (provided that the Authorized User, in its sole discretion, may accept the

same prior to expiration to the thirty (30) day period). If the Contractor's materials, software or Services fail to meet the Contract specifications or other requirements, including the specifications of the brand name (see paragraph 4 of the Solicitation Instructions), or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the Authorized User from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of making payment, however, acceptance by the Authorized User following testing and evaluation during the thirty (30) day period shall not be conclusive that the materials, software or Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the Authorized User after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the materials, software or Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

38. SUPPLIES

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

39. WARRANTY

Contractor will provide warranty Services for all CBT software and Services for the entire Contract Term and any extensions thereof. Warranty Services consist of but not limited to, error free CBT and all Services delivered as stated in any Order, and the Contractor shall provide a toll free technical support contact number where any Authorized User may obtain assistance with the installation, configuration and use of the CBT product between the hours of 8:00 a.m. and 5:00 p.m. EST.

40. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the equipment or Services required by this Contract or (b) the vendor shall repeatedly fail to respond to requests for maintenance or other Services within the time limits set forth in the Contract or (c) the vendor shall breach any of the other terms set forth within this agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination. All costs of de-installation and return of the equipment will be the vendor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

41. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Schedule, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth and or the Authorized User may have under this agreement and the laws of the Commonwealth.

42. CONTRACTUAL DISPUTES

In accordance with Section 11-69 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 11-71 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 11-70, Code of Virginia or the administrative procedure authorized by Section 11-71, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or Services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support Services hereunder.

43. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

44. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and or the Authorized User and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

45. COMPLIANCE WITH FEDERAL LOBBYING ACT

a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

c. A representative of Contractor shall sign the certification attached as Attachment "A" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

46. CONTRACTOR'S REPORT OF SALES

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and Services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph

entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth and or the Authorized User accepts the Products or 3) other as defined by the Contractor.

47. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in paragraph 52, above. The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

48. NONVISUAL ACCESS TO TECHNOLOGY:

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network Services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.1-807 through 2.1-811 of the Code of Virginia.

49. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's Services offering include any goods or Services to be supplied by another party, the Contractor agrees as follows:

- a. The Contractor shall act as prime contractor for the procurement and maintenance of the entire proposal and shall be the sole point of contract with regard to all obligations under this Agreement.

and

- b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's products or Services, and that such other party has agreed in within that it has no objection thereto.

50. ORDERING

Authorized Users may order Products and Services from this Contract by one of the following methods:

- a. Purchase Order: An official Purchase Order form issued by an Authorized User
- b. Delivery Order (DO): A DO issued by the Acquisition services Division, DIT.
- c. Charge / Credit Card: Any order / payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each Order must not exceed \$5,000.00 or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days. Or
Any other order / payment charge or credit card process, such as AMEX, MasterCard, or Visa, which is under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products and Services available under this Agreement. Under no circumstances shall any Authorized User or other entity have the authority to modify this Agreement.

51. TERMINATION FOR CONVENIENCE

This Contract may be terminated, in whole or in part, upon sixty (60) days advance written notice by the Commonwealth and or the Authorized User of Virginia. There are no additional costs or financial obligations to the Commonwealth and or the Authorized User upon termination for convenience.

52. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER

Any individual Order placed under this Agreement may be terminated, in whole or in part, by an Authorized User for its convenience, at any time up to sixty (60) days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience.

53. SERVICES PRICING

Contractor will provide the Services as delineated in the Schedule herein at the prices identified in Contractor's response to solicitation IFB 3 2002-022 for a period not to exceed two (2) years. Services price increases for additional periods shall be effective on the anniversary date for each succeeding year after the initial two years. All increases will be governed by the CPI-W index entitled "Other Services". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office. If prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the Services at the lowest price available to any other customer.

54. eVA BUSINESS-TO-GOVERNMENT CONTRACTS:

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us , streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

As a vendor desiring to provide goods and/or services to the Commonwealth the contractor shall participate in the eVA Internet e-procurement solution and agree to the comply with the following:

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
- b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

The contractor's failure to comply with the above requirements shall entitle the Commonwealth to terminate this contract at anytime without penalty.

ATTACHMENT "A"
TO
AGREEMENT VA- _____ - ____
FOR THE
VIRGINIA DEPARTMENT OF _____

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Printed Name: _____

Organization: _____

Date: _____